

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on January 16, 2003 at 9:02 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Fred Thomas (R)
Sen. Bob Keenan (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 108, 12/20/2002; SB 140,
12/31/2002
Executive Action: SB 144

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HEARING ON SB 108

Sponsor: SENATOR WALTER L. MCNUTT, SD 50, SIDNEY

Proponents: Kevin Braun, Department of Labor & Industry; Jerry Keck, Employee Relations Division of the Department of Labor & Industry; Matthew Cohn, Montana State Fund; and Aiden Mhyre, Montana Chamber of Commerce.

Opponents: None

Opening Statement by Sponsor:

SEN. WALTER MCNUTT explained that the bill would revise workers' compensation laws. He said an amendment would be offered that was proposed by **George Wood**. After looking at the bill, they felt an amendment was needed in regard to lump sum advance payments that could be a problem in the fund. The other provisions of the bill are simply language clean up.

Proponents' Testimony:

Kevin Braun, Department of Labor & Industry, provided written testimony in support of SB 108, **EXHIBIT (bus09a01)**. He also provided a copy to committee members of the Supreme Court's Schimmel vs. the Montana Uninsured Employers Fund decision, **EXHIBIT (bus09a02)**. Mr. Braun distributed the proposed, unofficial amendments, **EXHIBIT (bus09a03)**.

Jerry Keck, Employee Relations Division, Department of Labor & Industry, spoke to SB 108 via written testimony, **EXHIBIT (bus09a04)**.

Matthew Cohn, Montana State Fund, registered his organization's support of the bill and stated his department's appreciation for the work that had been done and for including them in the process. He stated he had been asked to register the support of **Jacqueline Lenmark, American Insurance Association; Larry Jones, Liberty Mutual Insurance; and George Wood, Montana Self-Insured Employers.**

Aiden Mhyre, Montana Chamber of Commerce, offered their support of SB 108 and encouraged a do pass.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. CAROLYN SQUIRES asked **Mr. Keck** about the 60-day period for the decision to be rendered. **Mr. Keck** replied that in a typical workers' compensation case where there is a dispute over benefits, there is a required mediation. There is no time in the statute where, after the mediation is completed and if the persons are unhappy with the decision, it has to be filed with the workers' compensation board. The statute provides that any party to a dispute in a benefits case has two days from the injury to file with the workers' compensation board. His department believes the uninsured employers fund cases are slightly different in that, if the employer contests that benefits are owed and the department is paying those benefits, there is really no incentive for the employer to appeal that determination and take it to the workers' compensation board. If there is a dispute over whether or not benefits are owed, it gets it to the workers compensation court quickly while memories are fresh. **SEN. SQUIRES** concern was about the judge being able to deliver on everything within that 60-day period. **Mr. Keck** said the workers' compensation judge decides on about 200 to 250 matters per year. The UEF cases in which there are benefit disputes are probably not more than three or four cases per year, so it will not add significantly to his caseload.

SEN. SQUIRES asked **Mr. Braun** where truck driver Schimmel got his benefits? **Mr. Braun** explained that the truck driver was a Montana resident, but he was working for a Washington trucking firm. When the judge rendered his decision, it stated that the employee's actions be controlled from within the state of Montana or that employment duties are primarily carried out within the state of Montana. Mr. Schimmel drove his truck and worked more outside of Montana than within the state. Mr. Schimmel's out-of-state employer went bankrupt and the funds paid by the Uninsured Employers' Fund were never recouped.

SEN. DON RYAN referred to page seven, Section 3 in which some penalties are being added and on line 12, the timely payments. He wanted to know if the \$50 is for each employee or is that what the business pays per month. **Mr. Braun** answered that it would be for the business entity, but there would be one payment made no matter the number of employees. **SEN. RYAN** asked for confirmation that it is a \$50 late fee irregardless of the size of the business, and **Mr. Braun** answered in the affirmative. **SEN. RYAN** also asked if **Mr. Braun** believes the one percent per month will a boost to say the bill will get bigger if it isn't paid. **Mr. Braun** stated that is the gist of it.

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SEN. MIKE SPRAGUE referenced the issue of Canadian trucks and asked **Mr. Braun** how his department would handle out-of-nation cases. **Mr. Braun** explained that there is a provision for reciprocity between us and various Canadian provinces with regard to workers' compensation insurance. Any claims from out-of-nation trucks would be denied.

SEN. SHERM ANDERSON asked **Mr. Keck** to elaborate about the decline in the Uninsured Employers' Fund. **Mr. Keck** replied that his department did a survey to see how they stacked up next to other states. He thinks the primary reason is that the fund has been in operation for a fairly significant period of time and most employers know that responsibility and obligation are voluntarily performed. His department is implementing some practices to make sure they are doing the job they need to do to identify employers that are not properly covered.

SEN. VICKI COCCHIARELLA wanted to know the balance of the Uninsured Employers' Fund. Per **Mr. Keck**, as of January 1, the cash balance in the fund was \$614,025. With this amendment, if they were going to retain a three-month administrative cost balance, that amount would be \$240K, which only leaves \$373K to pay benefits. That amount could be wiped out with one bad claim and they would be in an insolvency situation. At this time, they are paying benefits to approximately 65 injured workers who filed claims that were determined to be valid under the Uninsured Employers Fund. That statute allows them to stop paying benefits to those workers when there are no longer any funds available.

SEN. COCCHIARELLA asked for clarification from **Mr. Keck** about the merits of the amendments and if their impact would be positive or negative. **Mr. Keck** said that is the issue they have struggled with over the last 12 to 18 months. One of their concerns was that if they stopped paying benefits when they were holding a 12-month reserve, the injured workers' attorneys would challenge whether or not that was an unreasonable reserve.

Closing by Sponsor:

SEN. MCNUTT said in closing that this is pretty much a housekeeping bill and he requested the committee's support of the bill.

CHAIRMAN DALE MAHLUM reported that there has been much discussion about SB 124; however, not much progress has been made. Therefore, he appointed a sub-committee comprised of **SEN.**

SPRAGUE, CHAIR, SEN. KIM HANSEN, SEN. ANDERSON, AND SEN. GLENN ROUSH to meet and discuss the bill. He said that representatives from the Direct Selling Association are flying in next week and will be given an opportunity to appear before the committee on Thursday, January 23, 2003.

HEARING ON SB 140

Sponsor: SENATOR DALE MAHLUM, SD 35, MISSOULA

Proponents: Brenda Elias, State Auditor's Office; Joe Mazurek, D.A. Davidson; Don Allen, Montana Association of Insurance and Financial Advisors; Ted Heuchling, S.G. Long & Company.

Opponents: Brad Griffin, Montana Retailers Association

Opening Statement by Sponsor:

SEN. MAHLUM brought SB 140, which is a bill that revises security laws. It is basically an investor-protection bill due to some financial fraud problems. The Montana Securities Department seeks to protect Montana investors by strengthening some of the provisions of the Securities Act. This bill would help victims of securities fraud get their money back from violators. **SEN. MAHLUM** referred to the case of one of **SEN. ANDERSON'S** constituents in Deer Lodge who was a victim of such a scheme. This bill asks the Auditor's office to establish a program of routine examinations of broker-dealer branch offices. The bill also changes the statute of limitations provision. Since the last session, the securities department has investigated and taken action against three major pyramid scheme operators. These are fly-by-night operators that come in and take their money. They are not your Amway's, Mary Kay's or groups like that. This bill is not designed for those groups. The department has identified weaknesses and potential loopholes in the multi-marketing statutes. The bill seeks to close them.

Proponents' Testimony:

Brenda Elias, State Auditor's Office, passed out informational sheets for her testimony, **EXHIBIT (bus09a05)**.

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Ms. Elias went on and discussed various points of the bill.

Joe Mazurek, D.A. Davidson, expressed their support of the bill based primarily upon their working with the state Auditor's office and that office's willingness to sit down and visit about some of the provisions of the bill. He recognized the importance of the commissioner having the ability to inspect branch offices and recognize the need for consistency in statutes of limitation and where violations of the security statutes or regulations result in losses to investors. They think that, as drafted, this bill may go a little too far, but they think there is room to reach an agreement on how the bill should finally be shaped. He briefly expressed the basis for some of their concern. With respect to the branch office registration, they are a little bit concerned that it is a new state reporting requirement and think the information may be available through other sources already. In the interest of supporting additional visits to branch offices, they would prefer to have the broker-dealer licensure fee increased to raise funds. They also are concerned about the new definition because it is modeled on a rule that was proposed, but not yet adopted, by NASD. The one thing that the securities industry likes is consistency in terms of registration definitions. With respect to the statute of limitations (the period within which the commissioner or civil litigant could bring an action against a broker-dealer on the basis of a violation of the securities code), it is two years for violations based on a registration of the office or broker-dealer. If you aren't registered and you deal as a broker-dealer or as an individual licensee who isn't registered, you have absolute liability whether the failure causes a loss or not. **Mr. Mazurek** said that with respect to restitution, their biggest concern is that same strict liability standard. Instead of just bringing in those initial registration and filing requirements, this bill now brings in all the filing requirements, address requirements or any violation of the first three chapters of the security code with regard to restitution. There is a potential that there could be a requirement of full restitution whether or not that violation caused the loss.

Don Allen, Montana Association of Insurance and Financial Advisors, complimented **Ms. Elias** and the department on their willingness to work with them. He agreed with most of **Mr. Mazurek's** comments, but stated most of their people are smaller, independent businesses. Many times, they are tied to a larger brokerage firm, but not usually the larger brokerage firms with which we are familiar. He said he looks forward to working with the department and the commissioner's office to work on some of the issues that concern him, but agrees with the intent of the bill. He expressed surprise that his people were being mixed up with the pyramid schemes.

Ted Heuchling, S.G. Long and Company, stated that, while he's not always in favor of more regulation, he agrees with the intent of this bill and he believes that the issue of branch office registration is a constructive measure.

Opponents' Testimony:

Brad Griffin, Montana Retailers Association, rose in reluctant opposition to the bill as it is now written. He expressed his appreciation of the commitment of **SEN. MAHLUMN** and the department to work with his clients between today and next Thursday to resolve their differences. **Mr. Griffin** stated he represents Amway and the Direct Selling Association, a national trade group that represents 140 direct-selling associations like Amway, Mary Kay, Longaberger Baskets, and many more. He said they share the department's desire to prosecute fraudulent, multi-level marketers or pyramid schemes, because they spoil the market for legitimate companies. He directed the committee's attention to the parts of the bill which they want amended.

Questions from Committee Members and Responses:

SEN. COCCHIARELLA asked **Ms. Elias** for the reasoning behind the \$100 notice filing fee and if someone is attached to a broker in the state of Montana, don't they provide her department with an address on their license. **Ms. Elias** answered that when someone is registered as a broker/dealer salesperson, they are attached in some way to the broker/dealer firm. The address that her department has for the individual salesperson is the home office address which they get from a national database that's administered by the National Association of Securities Dealers. The other address her department is the corporate headquarters.

SEN. COCCHIARELLA wanted to know why the department couldn't add a line or two to get their local address. She felt this \$100 fee is unfair. **Ms. Elias** clarified that the \$100 fee would not be associated with the individual salesperson, but with the branch office. There would be some administrative time necessary to process those notice filings.

{Tape: 2; Side: B}

SEN. SQUIRES confirmed that the fee would be assessed to just the home office and **Ms. Elias** replied in the affirmative. He asked what would be done in the case of a residency being their home office. **Ms. Elias** answered that if their office is in their home and it meets the definition of branch office, there would be an obligation for them to notify her office. It's the position of her office that they should have the authority and right to go in and do examinations, if necessary.

SEN. GEBHARDT said he just heard a bill in which a \$17 registration fee was needed. He wanted to know why **Ms. Elias'** office needed \$100. She said her office is willing to work with the industry to come up with a way to make this branch office notification process work. Right now, broker/dealer firms are charged \$200 and broker/dealer salespersons pay \$50 to be registered in Montana. Her office figured \$100 was a good middle ground.

SEN. SPRAGUE commented on the bill placing multi-level marketing in the same group with pyramiding, which are not the same thing. He gave some background on past legislatures in which he saw this type of legislation come through and he raised some concerns about it. **Ms. Elias** replied that the intention of the state Auditor's office is to go after the illegitimate firms and not the legitimate ones such as Amway or any other companies that are actually selling product. She addressed the issue of pyramiding and their multi-level aspect, which is still legal. Her office is only looking at people who strictly use money to recruit people in their program. **SEN. SPRAGUE** stated he had a quibble with the impression that the auditor's office is after securities and yet, swept up in all of this, is all of the language of multi-level marketing. **Ms. Elias** understood what he was saying; however, it is in the state code. The Auditor's office was having to take action against these pyramid promotional schemes under the Securities Act and they were having to define pyramid promotional schemes. She said it was a difficult enforcement issue.

Closing by Sponsor:

SEN. MAHLUM shared a phone call he received this morning from some people in Missoula. They had seen an ad in the paper which advertised better rates on investments. Their life savings was in AARP. The salesman came to their house at their request. He talked to them. They signed some papers allowing him to transfer their money from AARP to his company named Americus. When they tried to find out how much money they had and what kind of interest they were earning, they were told by this company's representatives that they were not allowed to give these people that information. The couple went to the state Auditor's office, who got all of their money back for them. **SEN. MAHLUM** relayed how frightened the couple had been.

EXECUTIVE ACTION ON SB 144

SEN. COCCHIARELLA moved **DO PASS** on SB 144. The motion passed unanimously.

ADJOURNMENT

Adjournment: 10:52 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus09aad)